

**REPORT - PLANNING COMMISSION MEETING**  
**January 27, 2005**  
**February 24, 2005**

**Project Name and Number:** Foster Residence (PLN2005-00013)

**Applicant:** Jerry and Sharon Foster

**Proposal:** To consider a Planned District Minor Amendment to modify previously approved architectural details for exterior alcoves, openings, and terraces, and associated grading for an existing detached single-family dwelling under construction.

**Recommended Actions:** With regard to the applicant's proposed modifications to legalize the non-permitted Architectural Design work on the home:

- A. Approve the proposed architectural design changes related to window styles, terrace railings on front of home, style of openings, addition of two-story entry feature, change in garage door style and materials, and other proposed design changes, including the roof tiles, subject to conditions; and,
- B. Deny the requested modifications to legalize the non-permitted terrace expansion, and require the applicant to entirely remove the non-permitted roof-covered terrace structure constructed on the rear façade of the home on a slope of thirty percent (30%) or more in violation of the Hill Area Initiative of 2002 (Measure T).

With regard to the applicant's proposed modifications to legalize the non-permitted Site Work and Grading:

- C. Deny the proposed modifications to legalize the non-permitted western expansion of the driveway pavement and associated retaining walls, and require the applicant to remove the non-permitted pavement and walls, subject to conditions;
- D. Deny the proposed modifications to legalize the non-permitted widening of the walkway at the rear of the house, and require the applicant to remove the non-permitted retaining wall, concrete v-ditch, concrete patio and walkway and require the applicant to restore the slope and install improvements in conformance with the previously approved and permitted plans;
- E. Approve the proposed site work modifications on the eastern side of the home [an area not subject to Hill Area Initiative of 2002 (Measure T) restrictions because such area is less than a 30% slope] subject to conditions; and
- F. Approve the proposed site work modifications on the westerly side of the home [an area not subject to Hill Area Initiative of 2002 (Measure T) restrictions because such area is less than a 30% slope] subject to conditions.

**Location:** 304 Castro Lane, Lot 42 of Tract 6850

**Assessor Parcel Number(s):** 525-0285-008-00

**Area:** 5 acres

**Owner:** Jerry and Sharon Foster

**Agent of Applicant:** Roger Shanks, Planning Consultant

**Consultant(s):** Roger Shanks, Planning Consultant, Roger Shanks Consulting  
David Perng, Project Architect  
Frank Bellecci, Civil Engineer  
Marty Hoffman, Landscape Architect

**Environmental Review:** The proposed project is exempt from CEQA review under Section 15303 (construction of new single-family residence).

**Existing General Plan:** Low Density Residential (3-5 dwelling units per acre); Toe-of-the-Hill; Hill Face Open Space (Measure T)

**Existing Zoning:** P-96-8, Residential Planned District

**Existing Land Use:** Single-family residence under construction

**Public Hearing Notice:** A total of 30 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Lucy Court, Castro Lane, and Pementel Court. The notices to owners and occupants were mailed on January 17, 2005. In addition, one public hearing notice was sent to an interested party. A Public Hearing Notice was delivered to The Argus on January 10, 2005 to be published by January 13, 2005.

While re-noticing was not mandatory for this hearing, as the item was continued to this specific date, new courtesy notices were sent out on February 11, 2005 to all owners and occupants of property within 300 feet of the site as to ensure that all interested parties are informed.

**Executive Summary:** In September of 2000, the Planning Commission approved the specific location and design of a 5,093 square foot (SF) home and 899 SF garage on the subject parcel. The current applicant purchased the parcel subject to this previously approved home plan. After the applicant, as the owner-builder, was issued permits in August 2002 to build the September 2000 approved home design, the applicant modified the size, design, and location of improvements during construction, without City approval. The City discovered the non-permitted modifications in May 2004.

The Planning Commission is now being asked to consider proposed modifications to the Sept. 2000 approved home to legalize the non-approved modifications. Approval of the modifications would allow the applicant to retain several aspects of architecture, exterior grading, and landscape design which have already been constructed without approval or permits. Some of this non-permitted, but already constructed, site and grading work violates provisions of the Hill Area Initiative of 2002 (Measure T).

The non-permitted building modifications, including the added terraces/alcoves and architectural style changes, grading work and other site improvements, were discovered during an inspection by City staff. While the applicant has worked with staff on revised plans for conformance with Hill Area policies and regulations, including the Hill Area Initiative of 2002 (Measure T), the revised project as proposed does not completely comply with all of these policies and regulations. Staff recommends that the Planning Commission approve certain portions of the architectural elements of the proposed revised project, and deny portions of the exterior grading, retaining wall, and patio modifications, which denial would require the applicant to remove this non-permitted work.

**Background and Previous Actions:** On May 28, 1996, the City Council approved P-96-8 (a residential Planned District), Grading Plan, and Tract 6850, a 42-lot single-family residential subdivision located east of Mission Boulevard. The approved conditions of the Planned District and Tract, specifically Condition A-29, requires Planning Commission site plan and architecture approval (SPAA) of the custom residential lots created by the Planned District. The project parcel is Lot 42, a designated custom lot of the Tract. While the Planned District conditions do not establish specific design guidelines, the conditions state, in part:

*Areas of concern to be addressed in the design of residences for these lots are bulk and mass, landscaping, and designing residences to step with the slope of the land.*

In addition, Grading Plan (GP-96-12) Condition # 19 states:

*Flat pads shall not be permitted for the residential structures proposed for the designated custom lots (Lots 6, 7, 8, 9 and 42). The design for the residential pads shall conform to the contour of the finished grades and not vice versa, subject to the review and approval of the Planning Commission during the Development Organization review process. (Emphasis added.)*

In September of 2000, the Planning Commission approved the development of a 5,093 square foot single-family residence with an attached 899 square foot garage on the project parcel. The parcel's previous owners proposed the approved design. With the implementation of the project conditions, the Sept. 2000 project was consistent with hill area standards and Hill Area Development Policy in effect at that time, including the Hillside Initiative of 1981 (Measure A). According to the previous architect, the home was designed in "Monterey" style, noting that the style included a low-pitched roof usually covered in tile; wall mass surfaces that are thick and of stucco; hipped roof elements with a substantive overhang to create shade necessary in warm climates and western exposures; and decorative braces and beams at porches, corbel details and trims and pairs of shutters at windows. Associated landscaping and necessary limited grading to create some usable flat lawn areas were also approved. The Sept. 2000 approval was subject to extensive conditions imposed by the Planning Commission related to the architecture, as well as the location of the improvements. (See Informational 1.)

In August of 2002, the applicant and current owners, Jerry and Sharon Foster, applied for and were issued building and grading permits as owner-builders for the construction of the new residence based on the September 2000 approval.

In November of 2002, the Fremont voters adopted a new hill area protection initiative, the Hill Area Initiative of 2002 (Measure T, enclosed). The intent of Measure T was to further the goals of the original Hillside Initiative adopted in 1981 (Measure A). Under Measure T, additional development restrictions were imposed on land use and development within the City's Hill Area (and on future annexed hill areas), as well as new definitions (e.g., a new definition for the Toe of the Hill), were adopted. Generally, the new and previous initiatives both have the intent of "protecting the hills of Fremont from harmful and unnecessary development, while maintaining existing use of the hills for agriculture, outdoor recreation, very-low density residential, and open space". However, while Measure A allowed for minor encroachments into slopes in excess of 30%, Measure T contains a strict prohibition regarding development (including grading) on slopes of 30% or more. The applicant's proposed retention of the non-approved, but already constructed, rear retaining wall and related grading would be a major encroachment on a slope of 30% or more within the protected Measure T Hill Area, and would likely result in an increase in the project's visual impact from public places. The conflicts between the applicant's proposal and Measure T are discussed below.

In May of 2004, staff discovered that the previously approved Monterey style of the home had been modified in violation of the Sept. 2000 design approval to a Mediterranean style, and non-permitted exterior terraces/alcoves, extensive grading, and retaining walls were constructed without the benefit of City approvals. The applicant was directed to suspend non-approved construction activity. The applicant was informed that the design changes require Planning Commission approval (since the Planning Commission granted the original site plan and architectural approval (SPAA) of the project in Sept. 2000) as well as subsequent revisions to the building and grading permits. At the applicant's request, the City allowed the applicant to continue to work within the interior of the home as approved by the prior building permit.

On July 13, 2004, the applicant submitted a Planned District Minor Amendment application for consideration of the proposed modifications. After staff requested additional information, the applicant did not submit the required information for several months, thus the project application was not considered complete by staff until December 8, 2004. Staff then suggested some modifications to the architectural design of the home and recommended that the applicant revise the plans, particularly the grading and drainage plan, so that staff could make a better-informed recommendation to the Planning Commission. The applicant agreed and subsequently submitted revised plans on January 12, 2005. The project, with the complete submittals, was thus scheduled for public hearing on January 27, 2005.

On January 27, 2005, the Planning Commission introduced this item to receive public testimony and continued it to the next regularly scheduled meeting on February 24, 2005.

**Project Description:** The application is for a Planned District Minor Amendment to allow modifications to an approved single-family home (Informational 1) currently under construction at 304 Castro Lane. Based on the observations of staff, and the revised plans submitted by the applicant, the most noticeable changes to the previously approved "Monterey" style residence are:

- A complete redesign of the residence to a "Mediterranean" style with stucco clad walls, simple arched and rectilinear windows and raised trim, simplified forms and detailing, change in garage door style and materials, change in roof tile color and material from S-tiles in a brown blend color to charcoal-gray flat tiles, elimination of exposed rafters and joists, and the addition of balconies with wrought-iron railings;
- The addition of a roof-covered terrace at the rear of the residence encroaching on a slope of 30% or more;
- The extension of the roof over the approved right (south) side terrace of the residence;
- A modified front entry with a projecting two-story element; and
- Grading done to create flatter paved patio areas, walkways, and additional retaining walls partially on slopes of 30% or more.

#### **Applicant's Justification and City's Inspection Process:**

Justification Letters. In the justification letters prepared by the applicant's consultant (Informational 3), the applicant indicates that the revisions constructed to the home, requested to be retained under this proposal, were:

- (a) "to allow the home to blend in with the surrounding homes in the area, rather than standing out as a different and unique design".
- (b) necessary to accommodate the applicant's mother's physical disabilities and need for wheelchair access
- (c) applicant's engineer's concerns about inadequate rear drainage

The applicant's justification letter does not dispute the requirement of obtaining necessary approvals for the constructed modifications, however, the applicants state that they assumed such approvals were being obtained by their contractors, and suggests that because City staff made numerous inspections during the construction process, these non-approved modifications could have been detected earlier by City staff.

Standard Inspection Process. The following are the required inspections that the City conducts throughout the development and construction of a project. In general terms, primarily the Building Inspection Division conducts the major inspections, as follows:

1. Foundation Inspection—inspection of the reinforcing used for the foundation.
2. Under Floor Framing Inspection—inspection of floor joist, under floor plumbing.
3. Shear Inspection—inspection of plywood, roof and wall sheathing.
4. Roof Nail Inspection—inspection of roof nailing.
5. Lath Inspection—inspection of lath (paper and wire prior to application of stucco)
6. Rough Frame Inspection—inspection of framing, mechanical, electrical and plumbing.
7. Insulation Inspection—inspection of insulated walls and ceilings (mainly interior of home).
8. Gypsum Board Inspection—inspection of gypsum board nailing (interior of home).
9. Final Inspection—inspection of finished interior, electrical, mechanical and plumbing.

Misc. Inspections:

- Fire (at installation of fire sprinklers)
- Planning (required prior to Shear Inspection and at Final), and
- Engineer Inspection (review finish grades at Final).

Inspections for this Project. With regard to this particular project, Staff review of the City inspection records indicates the following:

- The first pier and footing inspection occurred in May and June of 2003;
- The inspection for under-floor, exterior shear and roof sheathing occurring between July of 2003 to December 2003;
- Another pier inspection was done on 1/22/2004;
- An inspection on footing for the rear retaining wall occurred on 2/10/2004;
- One additional inspection was done on 3/7/2004 for remaining retaining walls;
- Subsequently, on 4/20/2004, the City inspector requested that the applicant's contractor provide copies of approvals received for the modification to the retaining wall design. Within three months after the contractor began construction of the non-approved rear retaining wall City staff issued a notice of correction. Applicant's justification letter appears to misunderstand the nature of each building inspection, as each time a City inspector visits a building site s/he does not exhaustively review all work to ensure it meets all approvals, but inspections are focused on specific aspects of a project; and,
- The non-approved changes to the front entry and the roof-covered terrace structure attached to the rear of the building were detected during rough framing inspection in June of 2004. The contractor was put on notice and the applicant was immediately required to cease all construction activity and obtain necessary City approvals prior to the recommencement of the construction activity. Subsequently, in response to the applicant's request to not delay the interior work of the home, the City agreed to allow the continuance of the construction only within the approved interior areas. Again, at no time during construction did the applicant or its contractor seek City review of the modifications to the approved design.

Staff determined that there could be two possible reasons why the City did not detect the non-approved changes during earlier inspections, particularly at the Shear Inspection and Roof Nail Inspection phases. First, City staff does not know when the changes were constructed relative to the inspections. Second, the City inspector would have likely focused his or her attention and effort on ensuring the adequacy of the plywood nailing. In the periodic building inspection process provided for by the California Building Code, it is the contractor's responsibility to develop and construct the home, site and grading work according to the approved plans. Furthermore, the scope and time allowed for each inspection is based on the work at hand for compliance with building code provisions, and each inspection is not designed to be a comprehensive investigation to detect non-approved modifications to the previously inspected work. In most cases, these non-approved modifications become more obvious and more easily detectable as the project reaches a more completed stage. Therefore, work done without proper approvals at this stage of construction bears the risk of being denied and would likely result in the applicant being required to restore the home, site and grading work back to its approved plans.

## **PROJECT ANALYSIS:**

**Analysis of Applicant's Justification:** Staff agrees with the applicant that the proposed revised home would generally fit in with the existing character of the surrounding neighborhood. Staff has requested that the applicant provide further clarification on how the changes to the home and patio areas would provide for better wheelchair accessibility, as the interior and exterior of the home, from the main entrance to exterior proposed patios, contain numerous stairs and landings in the revised proposal.

City engineering staff has also reviewed the applicant's drainage concerns, as addressed below.

Applicant's concern that the City should have noted the non-approved work is discussed in detail above. It should be also be noted that a condition of the Sept. 2000 approval, pursuant to which the applicant is constructing the project, requires that the project foreperson contact the City for an inspection conducted by the Planning Division prior to the application of stucco finish (at or before Lath Inspection—see Condition 18 of original approval, PLN2000-00279, Sept. 2000). Based on the permit records for the project, the City was not contacted for such inspection.

**General Plan Conformance:** At the time of the approval of the Planned District rezoning in April of 1996, the 42 lot housing project was found consistent with the City's General Plan applicable at that time in that the number of units

proposed in the residential Planned District (P-96-8) was within the allowed density range. The Planned District implemented several General Plan policies and objectives, including Land Use (LU) 6.12, which refers to the transfer of density from higher elevations on the Hill Face to lower, less visible and sensitive areas of the Hill Area.

The Hill Area Development Policy, which was originally adopted in 1967, has been applied to all development in the hills, including P-96-8. Additional Hill Area policies and standards further limited hill area development as a result of the 1981 voter-adoption of the Hillside Initiative (Measure A), which have been incorporated in the City's General Plan and Zoning Ordinance. In general, development in the Hill Area, such as a new single-family home or extensive grading, would require the review and approval by the Planning Commission. Projects were reviewed for conformity with the Hill Area's purpose and intent of preserving and enhancing the beauty of the City's Hill Area, while allowing for orderly and limited development. Accordingly, the original plans approved for development on the project parcel of a single-family home with associated grading and landscaping within the identified building envelope as shown on the approved subdivision plans were found consistent with the original Planned District and these previous Hill Area development regulations.

With the adoption of the Hill Area Initiative of 2002 (Measure T) (enclosed), in November of 2002, several changes to hill area development regulations occurred, including the modification of the "Toe of the Hill" definition. The Toe of the Hill line is now defined as "a line along the base of the hills, where the natural grade first becomes twenty percent (20%) or more..." The project site was partially above the Toe of the Hill (TOH) line based on Measure A (the 1981 Hillside Initiative), and is predominately above the staff-proposed draft TOH line as defined under Measure T. Thus, the proposed project currently before the Planning Commission must comply with the performance provisions of both Measure A as well as Measure T (See Design Analysis, Measure T, below).

Other changes to the Hill Area development regulations are required pursuant to Measure T. For example, whereas development that resulted in minor encroachments on land slopes of 30% or more were previously permitted under Measure A, if the Planning Commission found the development proposed was consistent with the general purpose and intent of Hill Area regulations, under Measure T no development encroachments are permitted on land slopes of 30% or more (unless such restriction would deny a property owner of all viable use of his or her property). The original Sept. 2000 pre-Measure T approval by the Planning Commission permitted minor encroachments at the rear area of the residence for the construction of a retaining wall, as further explained under the "Grading/Topography" section below. The non-permitted construction at the rear of the home, including the addition of a roof-covered terrace, retaining walls and paved walkway area, proposed to be legalized with this application, is inconsistent with the Measure T's prohibition of development on a slope of 30% or more.

**Zoning Regulations:** Planned District P-96-8 requires Lots 6 through 9 and 42 (this project is Lot 42) shall conform to the following building requirements and the previous encroachment granted:

- Front Yard: 35 feet
- Side Yard: 15 feet minimum
- Rear Yard: 40 feet
- Side Street Side Yard: 20 feet
- Architectural projections (eaves, fireplaces, bay windows, and the like) may extend three feet into required yards.
- Yard requirements and the provisions of the Fremont Municipal Code, shall govern setbacks not specifically modified in the Planned District.
- Maximum Height: 30 feet
- Previously approved minor encroachment on a slope of thirty percent (30%)

The proposed project meets all of the above-mentioned setback requirements, with the exception of an encroachment into the front yard that was previously approved in Sept. 2000 by the Planning Commission because it was found necessary to locate the residence on the lowest buildable area on the lot to minimize the structure's visual impact. In addition, the Planning Commission originally approved a minor encroachment on a slope of 30% for the construction of a retaining wall at the rear of the residence, as further discussed under the "Grading/Topography" section below. However, additional encroachments on a slope of 30% or more are now proposed (and have been constructed without permits or approvals). As such, the revised project does not comply with the Hill Area regulations, as amended by Measure T and further discussed below.

## DESIGN ANALYSIS:

**Site Design:** The residence under construction is located at the lower elevation of the 5-acre parcel at the cul-de-sac end of Castro Lane. Except for the encroachments on a slope of 30% or more at the rear of the home, the building location shown in the revised plan is consistent with the building envelope identified in the underlying Planned District exhibits. A relatively steep driveway (maximum grade of 14.4 percent) rises from Castro Lane and leads onto the parking deck below the home and garage entrance. The current proposed plans, indicate there is a new significant encroachment (which has already been constructed without permits or approvals) within the rear of the home on a slope of 30% or more, inconsistent with the current applicable Hill Area regulations.

**Architecture:** In general, staff finds that some of the proposed modifications to redesign the residence to a "California Mediterranean" design are acceptable. However, it should be noted that staff believes the proposed changes to the style of the home, from the approved Monterey style to the now simple Mediterranean style, results in a less visually appealing home. Some of the design elements from the Planning Commission's Sept. 2000 approval which have been changed include:

- white vinyl windows with surrounds that are composed of simple foam trim instead of the almond vinyl colored windows accented with shutters;
- wrought-iron railings instead of the Monterey style wood railings;
- simpler and less detailed openings than previously approved;
- addition of a large heavy-appearing two-story entry feature;
- change in garage door and materials to generic style; and
- change in roof materials and color from approved s-tiles in a brown blend color to flat tiles in a charcoal gray color.

Staff raised these concerns during the review of the proposed project. The current proposal partially addresses these concerns. Based on the revised plans, the heavy arched element constructed over the two-story front entry proposed for retention would be revised to be less heavy-looking, to better fit with the scale and appearance of the front façade (Condition A-9); the balustrade railings previously proposed are now proposed as wrought-iron railings; and, windows proposed are now revised to be consistent throughout the home without muntins (window-pane grids).

However, staff is unable to support the proposed retention of the roof-covered terrace (constructed without approval) on the rear façade of the home. The rear roof-covered terrace, along with the retaining wall and additional paved areas, partially encroaches (at least five feet) on a slope of 30% or more, and is inconsistent with Measure T. While staff agrees with the applicant that the terrace on the rear façade, and the rear façade itself, is not clearly visible from a public place, the terrace is partially built on a slope of 30% or more, which is directly prohibited by Measure T. Staff recommends that the terrace, retaining wall and paved and additional paved areas at the rear be completely removed to achieve compliance with Measure T (Condition A-5).

**Hill Initiative of 2002 (Measure T):** The project site is located above the staff-proposed draft TOH line as defined by Measure T and thus must be reviewed for conformity with Measure T's performance standards. The following Measure T provisions are applicable:

- **Steep Slopes:** Under Measure T, no structure, development or building (e.g., the residence and accessory structures), in whole or in part, may encroach on a slope of thirty percent (30%) or more. As previously mentioned, the Planning Commission permitted the development of the home with a minor encroachment on a slope of 30% or more, consistent with the Hill Area regulations applicable in Sept. 2000. The proposed retention of the already constructed, but non-approved improvements (rear roof-covered terrace, retaining wall and paved walkway areas on slope of 30% or more,), would be inconsistent with this prohibition against development on steep slopes. Conditions are proposed to remove such improvements on a slope of 30% or more as set forth in Exhibit "B" (Conditions A-5 and A-6).
- **Visual Safeguards:** Measure T states that "to the extent practicable, structures shall be located, including by setbacks from parcel boundaries, on that part of a parcel...that minimizes visibility from public places." While staff

believes that the majority of modifications to the home do not significantly increase the project's overall visual impact from public places, staff believes that the proposed modifications relating to the proposed grading and retaining wall at the north side of the home would increase the visual impact from public places that would otherwise not be anticipated from the original project approval. The proposed revised grading that has already occurred on the left (northwest) side of the home should be further reduced and the retaining wall which has been located without approvals on a slope of more than 30% at the rear should be entirely removed as set forth in Exhibit "B" (Conditions A-7 and A-8). While staff had some concerns that the addition of the non-approved two story entry feature could increase the visual prominence the home, the fact that the front entry element does not rise above the height of the previously approved roof line reduces this concern. It should also be noted that the height and mass of the structure were approved prior to Measure T, utilizing Measure A standards and the then current hill policy and development standards. With the proposed project conditions implemented, including the removal of the retaining wall, staff believes that the project's overall visual impact is within the scope of the previously approved project. The previously approved color scheme for the home will also be reevaluated to ensure that the colors selected blend in with the surrounding Hill Area environment. The applicant could be required to modify the approved color scheme, as appropriate (Condition A-10).

- **Easements:** Measure T states, "An easement, conveyed to the City or the City's appropriate designee, shall be required for each parcel with respect to which development is permitted...[such] easement shall bar any further development that would not be permitted under this ordinance [Measure T]." It further states, "The easement shall terminate when the parcel is restored substantially to its pre-development condition, so far as the effects of development are concerned." Measure T requires that an easement (that conveys no possessory interest to the City, nor confers any right to public access) be recorded on the subject site, particularly affecting the constrained areas of the site, to ensure conformity with the adopted Measure T performance standards. If the parcel is restored to its original condition, such as removal of all structures and grading a site substantially back to its pre-development condition, the easement would be terminated. Should the Planning Commission approve the project, the applicant will be required to comply with this standard, prior to the issuance of an amended/revised building permit.

Measure T provisions regarding minimum parcel size, permitted use, wetlands and riparian corridors, critical wildlife habitat, ridgelines and hilltops, and development envelopes are not at issue with this proposed project.

**Grading/Topography:** The original planned district and subdivision improvements included very little grading or other development within the subject lot. The only improvements were the installation of a concrete drainage ditch along the southwestern property line, grading associated with construction of the ditch, and construction of the Castro Lane cul-de-sac street improvements, which required a very small amount of grading behind the sidewalk.

In September 2000, Planning Commission approved a planned district minor amendment for site plan and architectural approval (SPAA) for the building and site plan design. At that time, the project included improvements on the northern side of the house that resulted in minor encroachments into slopes in excess of 30% (which was permitted under regulations in effect at that time). The previous Planning Commission staff report included the following:

*The applicant has worked with staff in reducing the encroachment of the proposed development on the 30% slopes. The location of the building pad has been adjusted to remove the encroachment in the 30% slope. Only the proposed rear yard landscaping and retaining wall with a maximum height of 3 feet will encroach in the 30% slope. Staff concurs with the applicant's proposal to construct landscaping and a retaining wall within the backyard and considers it a minor encroachment into the 30% slopes.*

With its Sept. 2000 approval, the Planning Commission determined that the encroachment into slopes that exceed 30% was minor. At that time, such minor encroachments were allowed if the Planning Commission found that the proposed encroachment did not conflict with the purposes and intent of the Hill Area Development Policy and Hillside Initiative of 1981 (Measure A).

Based upon the applicant's recent grading plan submittal, the revised project proposes further encroachment into lands having slopes exceeding 30%. The roof-covered terrace addition to the rear of the house, the expansion of the rear



walkway from approximately 5 feet wide to 10 feet wide, and the resulting shift of the retaining wall 5 feet to the north, each encroach further into slopes exceeding 30%. Staff estimates that the applicant proposes approximately 1,000 square feet of added encroachment into existing slopes that exceed 30%.

In addition to the increased encroachment onto slopes exceeding 30%, the revised project includes increases in the amount of pavement and retaining walls for the project. Staff estimates approximately 1,400 square feet of additional pavement results from: westward expansion of the driveway (+570 SF); widening of the walkway on the north of the building (+600 SF); and a new concrete patio in the northwest corner of the building site (+220 SF).

Exterior retaining walls have been increased by approximately 140 linear feet over the permitted quantity of 320 linear feet, for a new total of 460 linear feet. The majority of proposed retaining walls are three feet or less in height. However there are locations where retaining walls exceed three feet in height, which is not permitted under the original planned district, the planned district amendment for the custom home, or in the Hill Area Development Policy. The preliminary grading plan shows retaining walls taller than three feet in the following locations: (i) behind the house, where the wall is shown five feet further from the house than was permitted; (ii) along the western side of the house, where three walls extend from the side of the home to create flattened side yard area; and (iii) along the driveway expansion.

On January 20, 2005, the applicant and design team provided letters (Informational 3) that include justification for the proposed revisions to the grading plan and landscape plan (sidewalks and patios). The justifications presented were not submitted with the initial application or any of the subsequent plan submittals. The justifications include the following:

- **Moving Retaining Wall Away From Rear of Building:** The Project's Civil Engineer's letter suggests that moving the wall will: (i) reduce the potential for damage to the home from movement of the retaining wall; (ii) provide room for construction equipment to clean erosion or landslide debris; and (iii) provide more room for emergency service personnel.

Staff Response: Alternative and flexible materials, instead of concrete, could be used for the flat area between the house and the retaining wall. Lawn, decomposed granite, or pavers are examples of such materials. Appropriate erosion controls were recommended in the original project geotechnical report and such recommendations were approved and are required by the City. The original project's geotechnical report concluded that the slope instability hazard for this lot is low. The Fire Department does *not* require a 10-foot wide flat area on all sides of residential structures for emergency service personnel response.

- **Drainage Concerns:** The applicant, drainage specialist Butch Ripley, and civil engineer Frank Lee (not the Project Civil Engineer), all state that the approved and permitted Sept. 2000 design did not include an adequate drainage system at the rear of the house.

Staff Response: The Sept. 2000 permitted design includes a retaining wall with a J-ditch, designed to collect runoff from the slope above and directed the runoff into the underground storm drain system. The applicant's proposed design includes a retaining wall with a V-ditch, which fundamentally functions in the same manner as the permitted J-ditch. The proposed V-ditch may be larger than the permitted J-ditch ditch, but no drainage calculations have been submitted by the applicant demonstrating the need for a larger ditch. The original design by the Project Civil Engineer was reviewed, approved, and permitted by the City. Moving the retaining wall and ditch five feet further from the house does not decrease the amount of runoff from the hill face.

Staff does not consider the majority of the applicant's proposed grading revisions to be consistent with the previously approved planned district, the hillside development standards in place when the project was approved, or the Hill Area Initiative of 2002 (Measure T). The approximately 1,000 square-foot encroachment into slopes of 30% or more violates Measure T's specific prohibitions. The western expansion of the driveway and associated retaining walls does not minimize disturbances of the natural terrain. Finally, some of the proposed new retaining walls exceed the maximum height allowed by the planned district, as well as the Hill Area Development Policy.

Staff recommends that the applicant's request to legalize this non-approved grading, drainage modification, and retaining walls be denied. In addition, conditions are recommended to require the applicant to restore these elements of the development to the original Sept. 2000 approvals. (See Exhibit B, Conditions A-7 and A-8).

**Urban Runoff Clean Water Program:** The applicant will be required to conform to the City's Urban Runoff Clean Water Program requirements. Conditions of approval are included in the Planned District Minor Amendment to reflect this requirement.

**ENVIRONMENTAL ANALYSIS:** The proposed project is exempt from CEQA review under Section 15301 (new single family home).

**Response from Agencies and Organizations:** All correspondence received from the applicant or any third party has been forwarded to the Planning Commission.

**Conclusion:** While some aspects of this project that may be subject to discretionary approval by the Planning Commission, some proposed modifications violate provisions of Measure T, specifically the proposed encroachments of the rear terrace structure, walkway and retaining wall into a slope of more than 30%. Within other locations on the parcel of less than a 30% slope, the Planning Commission has the discretionary authority to approve, deny or require the applicant to modify the proposal, based on findings for conformity with Hill Area regulations.

<b>Exhibits:</b>	Exhibit "A"	(Grading Plan, Landscape Plan, Floor Plan, Architectural Elevations, Conceptual Landscape Plan)
	Exhibit "B"	(Color and Material Board)

<b>Enclosures:</b>	Exhibit "A"	(Grading Plan, Landscape Plan, Floor Plan, Architectural Elevations, Conceptual Landscape Plan)
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<b>Informational:</b>	Informational "1"	(Original plans approved on September 14, 2000 (PLN2000-00279))
	Informational "2"	(Applicant's Justification Statement)
	Informational "3"	(Applicant's Photos)

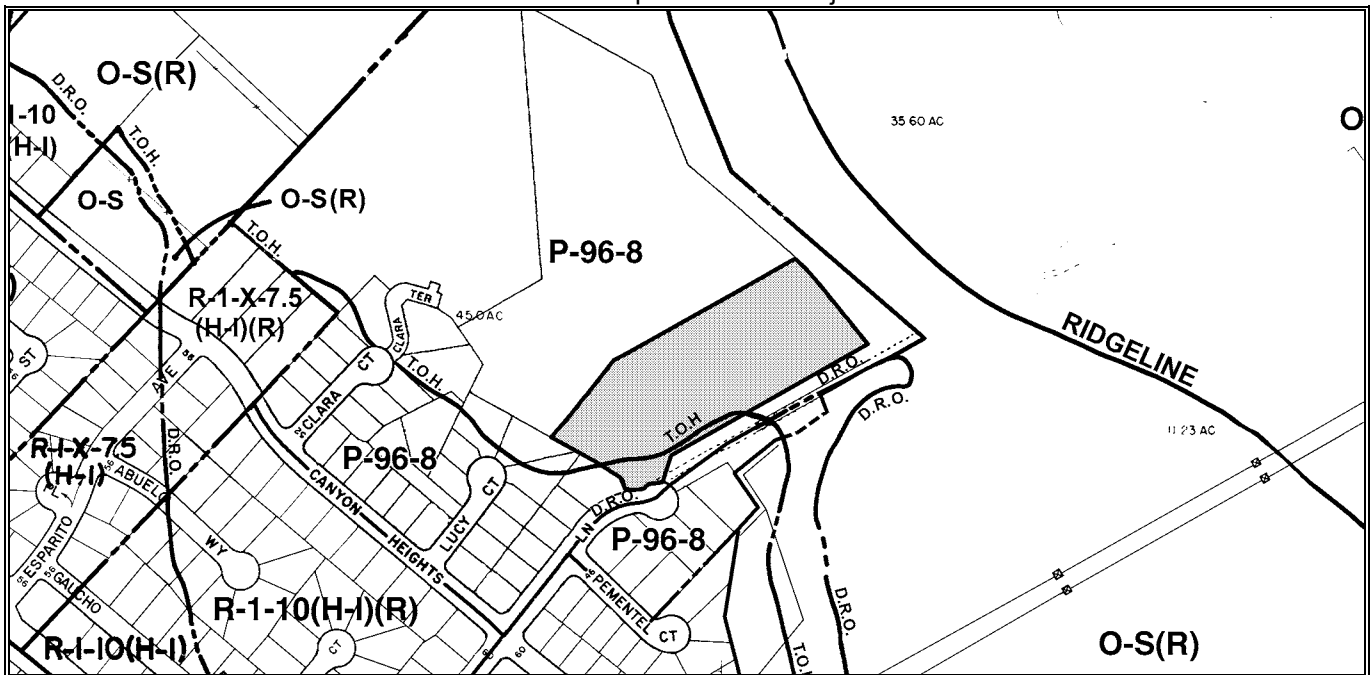
**Recommended Actions:**

1. Hold public hearing.
2. Find PLN2005-00013 is in conformance with the relevant provisions contained in the City's existing General Plan and the Hill Area Initiative of 2002, Measure T, as conditioned.
3. With regard to the applicant's proposed modifications to legalize the non-permitted Architectural Design construction of the home:
  - A. Approve the proposed architectural design changes related to window styles, terrace railings on front of home, style of openings, addition of two-story entry feature, change in garage door style and materials, and other proposed design changes, subject to conditions; and,
  - B. Deny the requested modifications to legalize the non-permitted terrace expansion, and require the applicant to entirely remove the non-permitted roof-covered terrace structure constructed on the rear façade of the home on a slope of thirty percent (30%) or more in violation of the Hill Area Initiative of 2002 (Measure T).

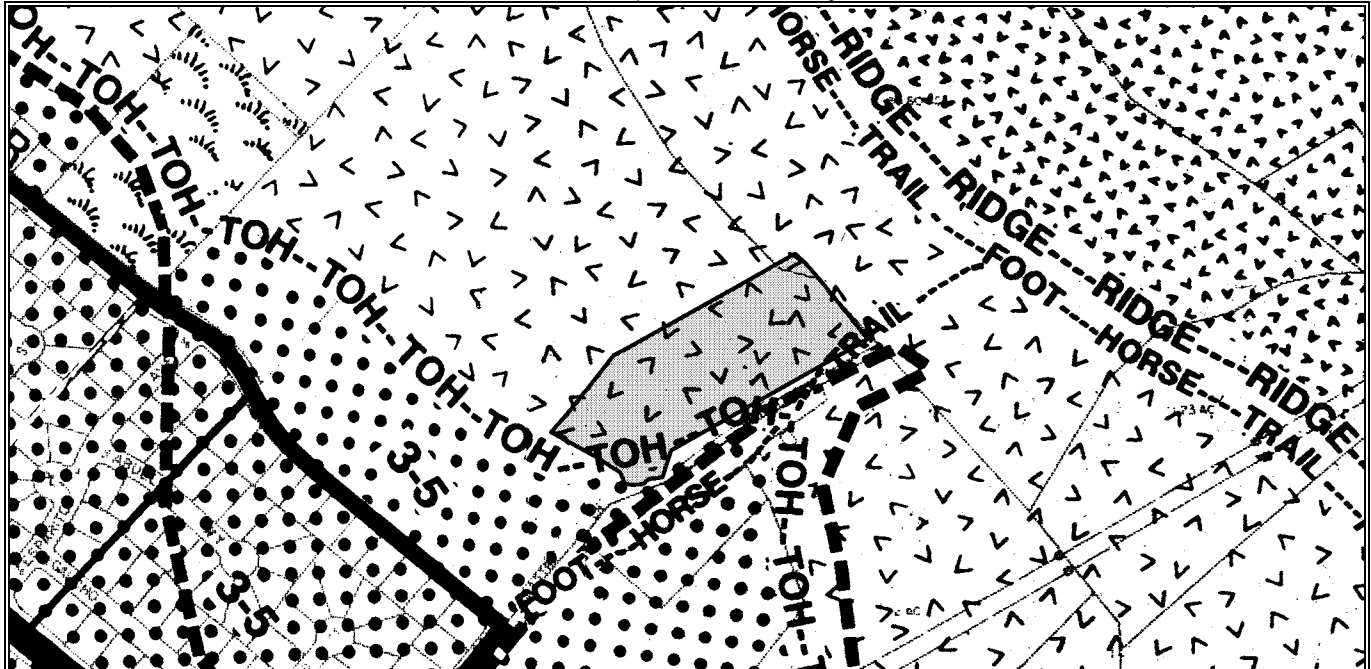
With regard to the applicant's proposed modifications to legalize the non-permitted Site Work and Grading:

- C. Deny the proposed modifications to legalize the non-permitted western expansion of the driveway pavement and associated retaining walls, and require the applicant to remove the non-permitted pavement and walls, subject to conditions;
- D. Deny the proposed modifications to legalize the non-permitted widening of the walkway at the rear of the house, and require the applicant to remove the non-permitted retaining wall, concrete v-ditch, concrete patio and walkway and require the applicant to restore the slope and install improvements in conformance with the previously approved and permitted plans;
- E. Approve the proposed site work modifications on the eastern side of the home [an area not subject to Hill Area Initiative of 2002 (Measure T) restrictions because such area is less than a 30% slope] subject to conditions; and
- F. Approve the proposed site work modifications on the westerly side of the home [an area not subject to Hill Area Initiative of 2002 (Measure T) restrictions because such area is less than a 30% slope] subject to conditions.

Existing Zoning  
Shaded Area represents the Project Site



Existing General Plan  
Shaded Area represents the Project Site



**Exhibit "B"**  
**Conditions of Approval for PLN2005-00013**  
**Foster Residence – Planned District Minor Amendment**  
**304 Castro Lane, Lot 42 of Tract 6850**

The conditions below are made on the basis of information from the public hearing and the staff report to the Planning Commission dated January 27, 2005, incorporated herein by reference:

**CONDITIONS OF APPROVAL:**

**General Conditions:**

- A-1 The project shall conform with staff amended Exhibit "A" (Grading Plan, Landscape Plan, Floor Plan, Architectural Elevations, Conceptual Landscape Plan), Exhibit "B" (Color and Material Sample Board), all conditions of approval set forth herein, and all conditions of approval of Planned District P-96-8. The conditions herein shall supercede specific conflicting conditions imposed under Planned District Minor Amendment PLN2000-00279 approved on September 14, 2000 by the Planning Commission.
- A-2 Prior to proceeding with site work and grading, plans shall be submitted to the Development Organization for review to insure conformance with all relevant conditions set forth herein, relevant codes, policies, and other requirements of the Fremont Municipal Code. Plans shall be submitted as revisions to the existing building and grading permit.
- A-3 Consistent with the Hill Area regulations and Measure T, minor revisions to the approved grading and landscape plans, as conditioned herein, may be permitted within the overall context of the approved design concept, subject to the approval of the Assistant City Manager during the Development Organization review process.
- A-4 In accordance the Hill Area Initiative of 2002, an easement, conveyed to the City shall be required for the parcel. Such easement shall bar any further development that would not be permitted under the Initiative, prior to issuance of a Temporary Certificate of Occupancy. The easement is negative only; it shall convey no possessory interest to the City, nor confer any right to public access. At such time the parcel is restored to its original condition, such as removal of all structures and grading the parcel substantially back to its pre-development condition, the easement would be terminated.
- A-5 Except as previously approved under Planned District Minor Amendment PLN2000-00279, all non-approved improvements (see Condition A-7 below) located on a slope of thirty (30%) or more shall be removed and restored, prior to issuance of a Temporary Certificate of Occupancy. The non-approved grading that occurred within the 30% or more slope areas shall be restored to its natural condition to the extent practicable. All improvements and grading shall be in compliance with applicable Hill Area regulations and Measure T. Only the minor encroachments to allow for the development of a retaining wall at the rear of the home as previously approved by the Planning Commission under Planned District Minor Amendment PLN2000-00279, prior to the adoption of the Hill Area Initiative of 2002, Measure T, and in accordance the construction plans approved under Building Permit BLD2001-04737 issued in August of 2002 may be constructed. No additions to the residence or improvements of any kind, including grading and the construction of retaining walls, are permitted to encroach onto a land slope of 30 percent or more.
- A-6 The non-permitted driveway pavement and associated retaining walls shall be removed prior to issuance of a Temporary Certificate of Occupancy. The slope shall be restored and landscaped, subject to the review and approval of the Development Organization.
- A-7 The non-permitted retaining wall (approximately 210 linear feet in length per Exhibit "A"), drainage ditch, patio, and walkway behind the house (northerly) shall be removed. The slope shall be restored and a wall, drainage ditch, and associated improvements installed in accordance with the approved building and grading permit based

upon PLN2000-00279. The applicant shall work with staff regarding the surfacing between the retaining wall and the house, to minimize the potential for damage due to movement of the retaining wall. All of the work described in this Condition A-7 shall be completed prior to issuance of Temporary Certificate of Occupancy.

- A-8 The approved revisions to the site work and grading, on the eastern and western side of the house, shall be submitted as revisions to the existing building and grading permit. The revisions shall conform to Planned District P-96-8 and the development standards of Measure T, subject to the review and approval of the Development Organization.
- A-9 The project shall conform to the City's Hazardous Fire Area requirements as set forth in Chapter 16 of the California Building Code, as amended, subject to the review and approval of staff during the Development Organization review process. An approved automatic fire extinguisher system (AFES) shall be installed throughout the residence, subject to the review and approval of staff during the Development Organization review process.
- A-10 The heavy arch opening at the two-story projecting main entrance element shall be reduced in size as shown in staff-amended Exhibit "A", unless such modification is determined to be structurally infeasible by the project structural engineer/architect and upon verification by the City's Building Division.
- A-11 The previously approved color scheme for the home, Exhibit "B", shall be reevaluated to ensure that the colors selected blend in with the changed roof color and surrounding Hill Area environment. The applicant shall be required to modify the approved color scheme, as appropriate, subject to the review and approval of the Development Organization.
- A-12 The design of garage doors shall be subject to the review and approval by the Development Organization. At minimum, the window treatment shall be changed to be consistent with the windows proposed for the home.
- A-13 All retaining walls shall be reinforced concrete. No retaining wall shall exceed three feet in height, unless otherwise noted herein. All exterior retaining walls adjacent to the house shall be designed to match the texture and color of the primary residence. Retaining walls further away from the house shall be of earth-tone color and designed to blend into the hillside and natural vegetation, subject to staff review and approval during the Development Organization review process.
- A-14 The project civil engineer and project landscape architect shall provide revised plans to minimize the height and appearance of the non-permitted retaining walls, some of which exceed three feet in height, on the east side of the house. The grading and landscape design of this area shall be subject to review and approval of the Development Organization.
- A-15 If site lighting is proposed in the landscape, the design, color, and placement of fixtures shall compliment the architectural style of the house and shall be of low intensity non-glare type fixtures, consistent with the provisions of Measure T.
- A-16 Project architect/designer shall submit a letter to the City certifying that the building has been constructed in conformance with the approved architectural plan, subject to the review and approval of the Development Organization. This letter shall be submitted prior to issuance of any Certificate of Occupancy (temporary or final).
- A-17 The project civil engineer-of-record shall submit a letter to the City certifying that the site grading and drainage are in conformance with the approved grading and drainage plans, subject to the review and approval of the Development Organization. This letter shall be submitted prior to issuance of any Certificate of Occupancy (temporary or final).
- A-18 The applicant shall continue to work with staff during the Development Organization review to ensure compliance with the Hill Area regulations, particularly Measure T, as well as all other applicable City regulations. All necessary City approvals (e.g., building and grading permits) shall be secured prior to the recommencement of

the exterior improvements on the site. Should the applicant disagree with an imposed modification requested by the Development Organization for conformity with these Hill Area regulations, the project will be referred back to the Planning Commission for consideration.

***During Construction:***

- A-19 Upon completion of the removal of all non-permitted improvements and the restoration/rectification of grading, consistent with the approval of revised building and grading permits issued in conformance with these conditions herein, the property owner or his/her designee shall be responsible to contact the Development Organization at (510) 494-4561 for an inspection by the Planning and Engineer Divisions prior to the commencement of additional work.
- A-20 The property owner shall be responsible for litter control and sweeping of all paved surfaces. All on-site storm drains shall be cleaned immediately before the start of the rainy season beginning on October 15 each year, subject to the review of the Building/Engineering inspector.
- A-21 Any vehicle or equipment washing/steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Outdoor washing must be managed in such a way that there is no discharge of soaps, solvents, cleaning agents or other pollutants to the storm drains. Wash water should discharge to the sanitary sewer, subject to review and approval of Union Sanitary District.
- A-22 Construction activities shall be limited to the following hours of operation:
- 7 a.m. to 7 p.m. Monday through Friday
  - 9 a.m. to 6 p.m. Saturday
  - No construction activities allowed on Sunday
- Failure to comply with the above mentioned hours of operation would result in the withholding of inspections.